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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 DAVID MCKEW,

13 Plaintiff,

14 v.

15 SAN FRANCISCO MUNICIPAL
RAILWAY, UNITED STATES POSTAL
16 SERVICE, MELVIN WASHINGTON,

17 Defendants.
18

Case No. 07-3620 EDL

JOINT STATUS STATEMENT

Date: October 16, 2007

Time: 10:00 a.m.

Place: Courtroom E, 15th Floor

1 THE PARTIES HEREBY SUBMIT THIS JOINT STATEMENT UPDATING THE COURT AS
2 TO THE STATUS OF THIS MATTER:

3 1. Subject matter of the litigation

4 This is a personal injury action. Plaintiff alleges he suffered personal injuries while
5 riding the San Francisco Municipal Railway's cable car on September 2, 2006.

6 2. Appearances

7 Plaintiff McKew has appeared and filed a Consent to the Magistrate's Jurisdiction.
8 See Docket #10. Defendant United States Postal Service filed a motion to dismiss the
9 complaint for failure to exhaust administrative remedies before filing suit and it filed
10 a Consent to the Magistrate's Jurisdiction. See Docket ## 4-7, 9.

11 Defendants City and County of San Francisco on behalf of San Francisco Municipal
12 Railway appeared by answering the complaint in State Court. San Francisco has not
13 filed an appearance in the federal action on the understanding that the action would
14 soon be remanded to state court. San Francisco concurs with plaintiff and the
15 Federal Defendant that the action should be remanded to State Court.

16 3. Procedural History

17 Plaintiff filed his complaint in San Francisco Superior Court on May 30, 2007, less
18 than four months after presenting his administrative tort claim to the United States
19 Postal Service. The Federal Defendant removed the action to this Court on July 13,
20 2007 and filed its motion to dismiss on July 27, 2007. See Docket ## 1, 4-7. The
21 Court did not conduct a hearing on the motion on September 4, 2007, as noticed, and
22 the motion was unopposed by plaintiff. See Docket # 11.

23 4. Dismissal and Remand of State Law Claims Requested

24 Plaintiff and the Federal Defendant concur that this action should be dismissed,
25 without prejudice, pursuant to the Ninth Circuit's controlling precedent applying the
26 Federal Tort Claims Act. All parties agree that after dismissal of the Federal
27 Defendant without prejudice, the Court should remand the remaining claims and
28

parties to state court. 28 U.S.C. section 1447(c) states, in pertinent part: “If at any time before final judgment it appears that the district court lacks subject-matter jurisdiction, the case shall be remanded.” The district court may remand a case for lack of jurisdiction on its own, without a motion by plaintiff or other parties. Page v. City of Southfield, 45 F.3d 128, 133 (6th Cir. 1995); In re Allstate Ins. Co., 8 F.3d 219, 233 (5th Cir. 1993).

DATED: October 10, 2007

KERN, NODA, DEVINE & SEGAL

_____/s/_____

Phillip A. Segal, Esq.

ATTORNEYS FOR PLAINTIFF

DATED: October 10, 2007

SAN FRANCISCO CITY ATTORNEY’S OFFICE

_____/s/_____

David Newdorf, Esq.

Deputy City Attorney

ATTORNEYS FOR DEFENDANTS MUNICIPAL
RAILWAY AND WASHINGTON

DATED: October 10, 2007

UNITED STATES ATTORNEY’S OFFICE

_____/s/_____

Jonathan U. Lee

Assistant United States Attorney

ATTORNEYS FOR UNITED STATES POSTAL
SERVICE